

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 983 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAHMADHUSSAIN HAJIMIYA

Versus

RAJAKBHAI HABIBBHAI

Appearance:

MR SANDIP C SHAH for appellants.

No one appears for respondents Nos.1 and 2 despite service.

MR AV TRIVEDI for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This is the claimant's First Appeal under Sec.110D of the Motor Vehicles Act against the judgment

and order dated 28.2.1986 passed by the Motor Accidents Claims Tribunal (Aux.) Ahmedabad (Rural) in M.A.C. Case No.762/82 whereby the claim has been partly allowed and the claimant has been held to be entitled to a sum of Rs.84,500/- together with running interest at the rate of 9% per annum from the date of the petition till realisation and to proportionate costs from the opponents jointly and severally. It has been given out by the learned counsel for the appellants that original claimant, namely, Mahmudhusain Hajimiya has died during the pendency of this Appeal in the year 1991 and, therefore, his legal representatives, namely, Fatimabibi, widow of claimant and Rukaiyabanu daughter of the claimant have already been brought on record as per the Court's order dated 28.8.2000 passed in Civil Application No.7814/2000.

2. Briefly stated the facts giving rise to this case are as under:-

On 4.6.1982 the original claimant was coming to Ahmedabad from Dhandhuka driving a Matador No.GRR 3390 on the highway leading to Ahmedabad. When the claimant was passing near the village Raika, one truck No.GTH 7067 came from opposite side, the truck was being driven by one Rajakbhai Habibbhai - Respondent No.1 herein in the midst of the road with full light and high speed. It is also the case of the claimant that on seeing the truck, he took the matador on the extreme left side of the road and blew horn and gave signal with his lights. Yet the truck dashed against the matador and the accident occurred as a result of which the claimant sustained injuries and became unconscious. The claimant was removed to the V.S.Hospital in an unconscious state and remained as indoor patient in the said Hospital upto 13.7.1982. The claimant sustained fracture in his right leg and suffered great pain as a result of the said injury. He also sustained fracture in his right hand and plaster cast was given to his right hand. According to the claimant, there was no movement of the blood in his right leg and right hand and he lost the grip of his right hand. Regarding the income, the claimant's case was that he was getting monthly salary of Rs.500/-- and in addition to the said salary of Rs.500/-- per month, he was also getting daily allowance of Rs.20/-. It is the case of the claimant himself that his monthly income was Rs.875/-- on the date of the accident, which shows that the daily allowance of Rs.20/-- he used to get only when he used to work and only on such days when he was required to discharge additional duties, because in case he was to get Rs.20/- as daily allowance every day, the

total income would go upto Rs.1100/- per month. According to the claimant he was serving in M.G.Enterprise and the said Firm is said to have been closed as mentioned in the body of the impugned order itself. It is also the case of the claimant that he spent Rs.15,000/-- against medical treatment, diet and transportation charges as also attendance charges. He had come with the case that there had been a permanent partial disability and that he is not able to walk without crutches nor able to climb stairs and he is experiencing difficulty in putting on the cloths. It is also his case that as a result of these injuries, he lost the job and his nephew maintains him. Initially the claimant had put up his claim for a sum of Rs.1,50,000/-but the claim was later on revised to Rs.2,00,000/-. The claim, as above, was filed before the Motor Accidents Claims Tribunal under Sec.110A of the Motor Vehicles Act. On notice being issued by the Tribunal, respondent No.3 i.e. Insurance Company filed the written statement at Exh.17 contending therein that the Application for damages was not maintainable, the amount of monthly income was also disputed. The injuries alleged to have been sustained by the claimant had also been disputed. It was also not admitted that the driver of the Truck was driving the same in a negligent manner and the claimant's case that he had spent Rs.15,000/-against medical treatment etc. had also been disputed. The opponent No.3 i.e. Insurance Company came with the case that the claimant himself was negligent and was, therefore, not entitled to claim any damages. The case of contributory negligence was also pleaded in alternative. Opponent No.2, who was the owner of the truck, also filed written statement on the same lines at Exh.52.

3. On the basis of the pleadings of the parties, the following issues were framed by the Motor Accident Claims Tribunal and findings were recorded as mentioned against each of the issue as under:-

"1. Whether the applicant proves that he sustained injuries due to rash and/or negligent driving of Truck No.GTH 7067 by opponent No.1?
- In the affirmative.

1-A Whether there was any contributory negligence on the part of petitioner in driving his matador?
- In the negative

2. If so, whether the applicant further proves that he is entitled to recover Rs.2,00,000/- or any

part thereof as compensation from the opponents or any of them?

- Rs.84,500/- from the opponents jointly and severally.

3. As per final order.

- As per final order."

The claim was allowed for a sum of Rs.84,500/- together with running interest at the rate of 9% per annum from the date of the petition till the date of realisation with proportionate costs. There is no dispute between the parties before us that the entire amount, as ordered by the Motor Accident Claims Tribunal, has already been paid by respondent No.3 and has been received by the legal representatives of the original claimant.

4. The Tribunal has determined the damages to the extent of Rs.84,500/- instead of the sum of Rs.2,00,000/-- claimed by the claimant as per the details given hereinunder:-

- (i) Rs.20,000/- For pain, shock and suffering etc.
- (ii) Rs.36,000/- For future loss of income
- (iii) Rs.19,500/- For loss of income
- (iv) Rs. 7,500/- For medical treatment, transport charges and diet.
- (v) Rs. 1,500/- For attendant charges.

Rs.84,500/-

5. Before this Court the challenge to the aforesaid impugned judgment and award dated 28.2.1986 is that the Tribunal ought to have awarded a sum of Rs.30,000/- against pain, shock and sufferings; the sum of Rs.31,200/-- for actual loss of income for 39 months, the sum of Rs.1,44,000/-- for future loss of income. It may be mentioned that against these three items, if the amount, which is now sought to be claimed by way of challenge to the order passed by the Tribunal, is taken into consideration alongwith the amounts awarded against other two items by the Tribunal i.e. medical expenses and attendant charges as per the award, the total claim exceeds even the sum of Rs.2,00,000/-- as was claimed by the claimants.

6. The grievance regarding the amount for pain, shock and suffering, as has been submitted by the learned counsel for the appellants, is that the claimant had

sustained injuries as under:-

- (a) Fracture on right leg, which was required to be amputated from above knee joint.
- (b) Fracture of left leg.
- (c) Fracture on right hand.

The learned counsel for the appellants has sought support from the deposition Exh.42 made by the claimant for proving the income and injuries; Exh.60 - deposition of Dr. P.N.Shah - Orthopaedic Surgeon of V.S. Hospital, who attended the claimant on 5.6.82; Exh.58 - deposition of Dr.N.M.Shah, who assessed the disability and gave Exh.59 the disability certificate. It has been submitted by the learned counsel for the appellants that immediately after 4 days from the date of accident, the claimant had to undergo operation for amputation of right leg from above knee joint. There is also a fracture on the left leg and the claimant was kept under plaster for about 10 months and that there was a fracture of right forearm for which he was put under plaster for one and half months and the follow-up treatment continued for about one and half years. The learned counsel for the appellants has placed reliance on the case of Amul Rameshchandra v. Abbasbhai, reported in 19 GLR 721. That was a case in which a boy aged 12 years met with an accident and his right foot was amputated from above the ankle and that the Court considering the earlier decisions of awarding damages under the head of pain, shock and sufferings awarded Rs.25,000/-- towards conventional global amount for pain, shock and suffering and enjoyment and amenities of life. In the case before us, the age of the claimant was 48 years at the time when he met with the accident whereas in the case of Amul Rameshchandra (Supra) the Court considered the special feature with regard to the age of the child being 12 years the amount of Rs.25,000/-- was awarded holding that normal child is always momentarily forgetful of perils of crossing and walking on the road and even if he failed to notice oncoming vehicle, he cannot be held guilty of contributory negligence and the Court observed with regard to the duty of the driver of the vehicle that he must take extra care in such circumstances and the amount for pain and suffering etc. was revised to Rs.35,000/- due to passage of time and because the young boy aged 12 had suffered grievous injuries resulting in amputation above the ankle. Thus the facts of Amul Rameshchandra (Supra) are clearly distinguishable from the facts of the present case and we find the amount of Rs.20,000/- as has been awarded in the present case for pain, shock and suffering is quite in order and does not

warrant any interference.

7. So far as the case of loss of income is concerned, there is no dispute that the monthly salary of the claimant at the time of the accident was Rs.500/-. Although the monthly income of the claimant has been disputed by the respondent No.3, the fact remains that the claimant had pleaded that the salary was Rs.500/-per month and he was also getting daily allowance of Rs.20/-. He has also stated that at the time of the accident, the last pay, as was drawn by him, was Rs.875/-. The amount of Rs.375/- in addition to Rs.500/-- must have been received by him against the daily allowance. However, the earning of the daily allowance was variable and could not be taken as his regular income. This amount of daily allowance could be earned subject to the additional duty which was not fixed and the claimant did not produce any details except bald statement in this regard, although documentary evidence of contemporaneous nature could be produced from the record of the Company in which he was working. In this view of the matter, even if the claimant's case that for the purpose of considering the case of loss of income is considered after ignoring the sum of Rs.20/- against daily allowance, his monthly income has to be taken at the rate of Rs.500/-. As has been pointed out by the learned counsel for the appellants himself in the year 1982 the statutory minimum wages were for a sum of Rs.17/-- per day and on that basis also it comes out to Rs.510/-- per month and, therefore, the case of the loss of income has been rightly considered at the rate of Rs.500/-- per month by the Tribunal for the period i.e. from the date of accident to the date of deposition i.e. 31.8.85 i.e. for a period of 39 months and, therefore, the award of Rs.19,500/-- against the actual loss of salary at the rate of Rs.500/-- per month for 39 months is also found to be in order and the conclusion arrived at by the Tribunal in this regard does not warrant any interference.

8. However, while awarding the amount against the head of future loss of income and applying the multiplier of 15 years, the Motor Accident Claims Tribunal proceeded on the basis of reasoning which appears to be rather strange - viz - "However, we have to take into consideration the amount awarded to the applicant because he would get the interest on the amount of the award and, therefore, the future loss of income should be calculated on that basis. In Bharat Premjibhai's case, the Honourable High Court had taken the monthly income at

Rs.300/- but the monthly loss of earning capacity was estimated at Rs.90/-. In the instant case before me, it appears to me that the monthly loss of the applicant should be taken at Rs.200/-- on this basis considering the monthly loss income at Rs.200/-, the annual loss of income would come to Rs.2400/-. The applicant is aged 48 years and therefore, the multiplier of 15 should be applied and on applying the said multiplier, the applicant would be entitled to Rs.36,000/-- under the head future loss of income". Claimant in the instant case was essentially a driver and in view of the amputation of his right leg and the nature of his injuries, as was sustained by him in his left leg, it is clear that he could no more discharge duties of a driver and we find that it is certainly a case of total loss of earning capacity as a driver and further that the stipulation that the claimant would get interest on the amount awarded by the Tribunal, is rather irrelevant and does not appeal to the reason. We find that it also cannot be said in the facts of this case that for the rest of the period of his life his monthly income would have remained static at the rate of Rs.500/-- per month. The same could have gone up also and it could be much more than Rs.500/-- and, therefore, such consideration should neutralize the argument of earning the amount of interest on the awarded amount. In any view of the matter, we find that it was a case in which the Tribunal ought to have proceeded by taking it to be a case of total loss of income at the rate of Rs.500/-- per month and the amount against the future loss of income ought to have been counted by taking the claimant's income to be Rs.500/-- per month and on that basis it should have been a sum of Rs.90,000/- instead of Rs.36,000/-. We do not find that in the present case, there was any material to take the monthly salary of the claimant to be any amount less than Rs.500/-. We accordingly hold that against the future loss of income, the claimant was entitled to a sum of Rs.90,000/- instead of Rs.36,000/-- and accordingly, the amount, as awarded by the Tribunal is increased to Rs.1,38,500/-. In this connection, learned counsel for the appellants has also placed reliance on two decisions i.e. 21 GLR 412 (Mahomed Hanif v. Lunkaran) and 1984 ACJ 739.

9. The impugned judgment and order dated 28.2.86 is hereby modified accordingly and to that extent, the present Appeal is partly allowed. The appellants shall be entitled to the rest of the amount i.e. Rs.54,000/-- on the same terms with regard to the rate of interest, etc. from the respondents and the respondents shall be jointly and severally liable to pay the same. The

respondents shall deposit the due amount within three months from today. In the facts and circumstances of the case, the parties are left to bear their own costs.

(M.R.Calla,J)

(D.A.Mehta,J)